SUPREME COURT OF THE UNITED STATES.

No. 75.

SAMUEL SMYTH, PLAINTIFF IN ERROR,

vs.

DANIEL P. STRADER, JAMES PERRINE, AND JOHN H. WOODCOCK, LATE PARTNERS, UNDER THE FIRM OF STRADER, PERRINE & CO.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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J. & G. S. GIDEON, printers.

Pleas had before the honorable the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, at a term thereof begun and held at and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two, before his honor William Crawford, judge of said court.

Be it remembered that, heretofore, to wit, on the twenty-ninth day of October, in the year of our Lord one thousand eight hundred and forty, Samuel Smyth sued out of said court his writ of capias ad respondendum, against Daniel P. Strader, John H. Woodcock, and James Perrine, in the words and figures following, to wit:

Writ.

UNITED STATES OF AMERICA:

SAMUEL SMYTH,
vs.
STRADER, PERRINE & Co.

Circuit court of the United States for the ninth judicial circuit, and southern district of Alabama.

The President of the United States to the marshal of said district, greeting:

You are hereby commanded to take the bodies of Daniel P. Strader, John H. Woodcock, and James Perrine, late partners under the firm of Strader, Perrine & Co., who are citizens of the State of Alabama, and them safely keep, so that you have them before the honorable the circuit court aforesaid, at the place of holding said court at Mobile, on the fourth Monday of November next, to answer unto Samuel Smyth, who is a citizen of the State of Pennsylvania, in a plea of trespass in the case, to the plaintiff's damage twenty-five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court,
[L. S.] this second Monday of March, in the year of our Lord one thousand eight hundred and forty.

Issued the 29th day of October, in the year of our Lord one thousand eight hundred and forty.

Attest: DAVID FILES,
Clerk C. C. southern district of Alabama.

This action is founded on two notes of the defendants, in favor of, and endorsed by, E. Stevenson; one dated March 10th, 1836, due four months after date, for $4,725 32, the other dated March 28th, 1836, for $6,126 54, due six months after date, negotiable and payable at the Bank of Mobile.

CAMPBELL & CHANDLER, *Plff's atto's.*

Received and served October 29th, 1840, on James Perrine and John H. Woodcock.

ROBERT L. CRAWFORD, *U. S. M.*

Daniel P. Strader not found.

ROBERT L. CRAWFORD, *U. S. M.*

And afterwards, to wit, at a term of the circuit court of the United States for the ninth judicial circuit, southern district of Alabama, begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, the plaintiff, by attorney, filed the following declaration, to wit:

Dec.

UNITED STATES OF AMERICA:

[Circuit] court of the United States for the ninth judicial circuit, district of Alabama—Fall term, 1840.

Samuel Smyth, who is a citizen of the State of Pennsylvania, by attorney, complains of Daniel P. Strader, John H. Woodcock, and James Perrine, partners, by the name of Strader, Perrine & Co., who are citizens of the State of Alabama, in custody, &c., of a plea of trespass on the case; for that, whereas the defendants heretofore, to wit, on the 10th day of March, 1836, at Mobile, to wit, in the district aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and then and there promised, four months after date thereof, to pay E. Stevenson, or order, forty-seven hundred and twenty-five $\frac{32}{100}$ dollars, for value received, negotiable and payable at the Bank of Mobile, and then and there delivered the said promissory note to the said E. Stevenson; and the said payee, who is a citizen of the State of Ohio, afterwards, and before the payment of the said sum of money, to wit, on the day and year aforesaid, in the district aforesaid, endorsed and delivered the said promissory note to Stinson & Campbell, who are citizens of the State of Louisiana; who afterwards, and before the payment of the said sum of money, to wit, on the day and year last aforesaid, in the district aforesaid, endorsed and delivered the said promissory note to the said plaintiff; and the said plaintiff avers that, afterwards, when the said promissory note became due and payable, according to the tenor and effect of the same, to wit, on the 13th day of July, 1836, the said promissory note was presented and shewn at the said bank, and payment of the same was then and there demanded, according to the tenor and effect of the said promissory note, but neither the said maker, nor the said defendants, nor any one on his or their behalf, did or would pay the same; and the said promissory note was then and there duly protested for non-payment; of all which the said defendants afterwards, to wit, on the day and year last aforesaid, had notice. For that whereas the defendants heretofore, to wit, on the 28th day of March, 1836, at Mobile, to wit, in the district aforesaid, made their certain pro-

missory note in writing, bearing date the day and year aforesaid, and then and there promised, six months after the date thereof, to pay to E. Stevenson, or order, sixty-one hundred and twenty-six $\frac{54}{100}$ dollars, for value received, negotiable and payable at the Bank of Mobile, and then and there delivered the said promissory note to the said payee, who is a citizen of the State of Ohio; and the said payee afterwards, and before the payment of the said sum of money, to wit, on the day and year aforesaid, in the district aforesaid, endorsed and delivered the said promissory note to Stinson & Campbell, who are citizens of the State of Louisiana, who afterwards, and before the payment of the said sum of money, to wit, on the day and year last aforesaid, in the district aforesaid, endorsed and delivered the said promissory note to the said plaintiff. And the said plaintiff avers that afterwards, when the said promissory note became due and payable according to the tenor and effect of the same, to wit, on the first day of October, 1836, the said promissory note was presented and shewn at the said bank, and payment of the same was then and there demanded, according to the tenor and effect of the said promissory note, but neither the said maker, nor the said defendants, nor any one on his or their behalf, did or would pay the same; and the said promissory note was then and there duly protested for non-payment; of all which the said defendants afterwards, to wit, on the day and year last aforesaid, had notice.

By means whereof, and by force of the statute in such case made and provided, that said defendant became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect thereof; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified; yet the said defendant, though often requested, has not paid the said plaintiff the said sum of money in the said promissory note specified, or any part thereof, but the same to pay has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of the said plaintiff of twenty-five thousand dollars; wherefore he sues.

GORDEN, CAMPBELL & CHANDLER,
Plff's atty's.

Whereupon afterwards, to wit, on the twenty-third day of February, in the year of our Lord one thousand eight hundred and forty-one, the plaintiff sued out of said court his alias writ of capias ad respondendum against Daniel P. Strader, in the words and figures following, to wit:

Alias.

UNITED STATES OF AMERICA:

Circuit court of the United States for the ninth judicial circuit and southern district of Alabama.

The President of the United States to the marshall of said district, greeting:

You are hereby commanded, as before, to take the body of Daniel P. Strader, of the late firm of Strader, Perrine & Co., who is a citizen of the State of Alabama, and him safely keep, so that you have him before the honorable the circuit court aforesaid, at the place of holding said court at Mobile, on the second Monday of March next, to answer unto Samuel Smyth, who is a citizen of the State of Pennsylvania, in a plea of trespass on the case, to the plaintiff's damage, twenty-five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said cir-
[L. s.] cuit court, this fourth Monday of November, in the year of our Lord one thousand eight hundred and forty.

Issued the twenty-third day of February, in the year of our Lord one thousand eight hundred and forty-one.

Attest: DAVID FILES,
Clerk C. C. southern district of Alabama.

This action is founded on two notes of Strader, Perrine & Co.'s, in favor of, and endorsed by, E. Stevenson; one dated March 10th, 1836, due four months after date, for $4,725 32, the other dated March 28th, 1836, for $6,126 54, due six months after date, negotiable and payable at the Bank of Mobile.

CAMPBELL & CHANDLER,
"Not found." *Plff's atty.*

Whereupon afterwards, to wit, at a term of the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, begun and held in and for said district at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-one, before his honor William Crawford, judge of said court, the following proceedings were had:

Continuance.

"It is ordered by the court that this cause be continued." And afterwards, to wit, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and forty-one, the said Samuel Smyth sued out of said court his pluries writ of capias ad respondendum against the said Daniel P. Strader, in the words and figures following, to wit:

Pluries.

UNITED STATES OF AMERICA:

Circuit court of the United States for the ninth judical circuit and southern district of Alabama.

The President of the United States to the marshall of said district, greeting:

You are hereby commanded, as before, to take the body of Daniel P. Strader, of the late firm of Strader, Perrine & Co., who is a citizen of the State of Alabama, and him safely keep, so that you have him before the honorable the circuit court aforesaid, at the place of holding said court at Mobile, on the fourth Monday of November next, to answer unto Samuel Smyth, who is a citizen of the State of Pennsylvania, in a plea of trespass on the case, to the plaintiff's damage of twenty-five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, [L. S.] this second Monday of March, in the year of our Lord one thousand eight hundred and forty-one.

Issued the seventeenth day of May, in the year of our Lord one thousand eight hundred and forty-one.

Attest: DAVID FILES,
Clerk C. C. southern district of Alabama.

This action is founded on two notes of Strader, Perrine & Co., in favor of, and endoised by, E. Stevenson, one dated March 10th, 1831, due four months after date, for $4,725 32, the other dated March 28th, 1836, for $6,126 54, due six months after date, negotiable and payable at the Bank of Mobile.

CAMPBELL & CHANDLER,
Plff's attys.

"Not found." R. L. CRAWFORD, *Marshall.*
By C. CUYLER.

Whereupon afterwards, to wit, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and forty-one, the following plea was filed, to wit:

Non est factum.

SAMUEL SMYTH, vs. STRADER, PERRINE & Co. } United States circuit court—term.

And the defendants, on whom the writ has been served by attorney, come and defend the wrong and injury, when, &c., and say they did not undertake and promise, in manner and form as the plaintiff in his said declaration thereof hath complained against them, and of this they put themselves on the country. And for further plea in this behalf the said defendants say actio non, because they say they did not sign, or authorized to be signed, the said note mentioned in the plaintiff's said declaration, and this they are ready

to verify. Wherefore they pray judgment, whether the plaintiff ought further to have or maintain his aforesaid action thereof against them.

GAYLE & PHILLIPS,
Defendants' attys.

THE STATE OF ALABAMA, *Mobile county:*

Personally appeared before the undersigned, a justice of the peace for the county aforesaid, John H. Woodcock, one of the defendants to the above stated cause, and on oath saith, that the second plea above pleaded is true in substance and fact, to the best of his knowledge and belief.

Signed, "JOHN H. WOODCOCK."

Sworn and subscribed to before me, this 22d day of November, A. D. 1841.

"JO. CLEMENT."

Filed, 22 November, 1841.

"D. FILES, *Clerk.*"

And afterwards, to wit, at a term of the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, begun and held in and for said district at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, before his honor, William Crawford, judge of said court, the following proceedings were had, to wit:

Continuance.

"By consent of parties, it is ordered by the court that this cause be continued."

And afterwards, to wit, on the twelfth day of January, in the year of our Lord one thousand eight hundred and forty-two, the said Samuel Smyth sued out of said court his alias pluries writ of capias ad respondendum against the said Daniel P. Strader, in the words and figures following, to wit:

Alias pluries.

UNITED STATES OF AMERICA:

Circuit court of the United States for the ninth judicial circuit and southern district of Alabama.

The President of the United States to the marshal of said district, greeting:

You are hereby commanded, as often before, to take the body of Dan'l P. Strader, of the late firm of Strader, Perrine & Co., who is a citizen of the State of Alabama, and him safely keep, so that you have him before the hon. the circuit court aforesaid, at the place of holding said court at Mobile, on the second Monday of

March next, to answer unto Samuel Smyth, who is a citizen of the State of Pennsylvania, in a plea of trespass on the case to the plaintiff's damage twenty-five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this fourth Monday of November, in the year of [L. S.] our Lord one thousand eight hundred and forty-one. Issued the twelfth day of January, in the year of our Lord one thousand eight hundred and forty-two.

Attest: DAVID FILES,
Clerk C. C. southern district of Alabama.

This action is founded on two notes of Strader, Perrine & Co., in favor of, and endorsed by, E. Stevenson; one dated March 10th, 1836, due four months after date, for $4,725 $\frac{32}{100}$; the other dated March 28th, 1836, for $6,126 $\frac{54}{100}$, due six months after date, negotiable and payable at the Bank of Mobile.

CAMPBELL & CHANDLER,
Plff's Attys.

"Not found."

And afterwards, to wit, at a term of the circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama, begun and held in and for said district at the place of holding said court at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-two, before his honor, William Crawford, judge of said court, the following proceedings were had, to wit:

Continuance.

"By consent of parties, it is ordered by the court that this cause be continued."

And afterwards, to wit, at a term of the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, begun and held in and for said district at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two, the defendant, John H. Woodcock, filed his following plea, to wit:

Woodcock's plea of bankruptcy.

Fall term, 1842.

CIRCUIT COURT UNITED STATES, *Mobile.*

The defendant in bar, John H. Woodcock, pleads that since the last continuance by the decree of the district court for southern district of Alabama, he has been discharged as a bankrupt, and

has obtained his final certificate of discharge herewith shown, and issue to the county, &c.

"STEWART & EASTON,
For defendant Woodcock."

"Test: GAYLE."

"Replication per fraudem and issue joined.

"GORDON & OGDEN."
"GIBBON & FISHER."

And afterwards, to wit, at the same term of said court, the defendant, James Perrine, filed the following, to wit: "Primrose—that the partnership of Strader, Perrine & Co. commenced in November, 1835, and that in December, 1835, Perrine withdrew. That Perrine sold out his interest to Stephenson in December, 1835, and that Stinson & Campbell, through Primrose, paid to Perrine the sum agreed for his interest $1,000, and knew of his withdrawal. That the note sued on was not made at the time of its date, and not in possession of Stinson and Campbell till after the 17 May, 1836, and not put off by Stevenson till after that time."

Signed, "J. PERRINE."

Sworn to and subscribed in open court, this 2 January, 1843.
D. FILES, *Clerk.*

And afterwards, to wit, at the same term of said court, on the second day of January, in the year of our Lord one thousand eight hundred and forty-three, being a day of said term, before his honor, William Crawford, judge of said court, the following proceedings were had, to wit: "This day came the parties, by their attorneys, whereupon also came the following jury, to wit: Francis Robinson, William P. Carter, Henry Stickney, B. W. Van Epps, James Hagan, David Jones, C. A. Kelly, James B. Ames, D. McCullough, Robert Strother, James H. Spratley, and Dudley Hubbard, twelve good and lawful men, who being elected, tried and sworn well and truly to try the issue joined, to wit:

Verdict.

As to the defendant, Jno. H. Woodcock, whether he has been discharged as a bankrupt under the act of Congress of 19th August, 1841, and as to the said James Perrine, whether the said supposed promissory note, etc., are his act and deed, upon their oaths do say, that we, the jury, find as to said Woodcock that he has been discharged as a bankrupt under the provisions of said law; and as to said defendant, Perrine, we the jury find for the defendant. It is therefore considered by the court, that the said defendant Perrine go hence without day, and recover his costs by him in his defence in this behalf expended; and that the said defendant, Woodcock, go hence without day; and that said plaintiff be in mercy."

Memorandum.

On the trial of this cause, the plaintiff's counsel tendered a bill of exceptions, which was received, signed and sealed by the court, and ordered to be made a part of the record in this cause, which bill of exceptions is as follows, to wit:

SAMUEL SMYTH
vs.
STRADER, PERRINE & Co. } Bill of exceptions.

Be it remembered, that on the trial of this cause, before the honorable William Crawford, presiding judge of the circuit court of the United States, for the ninth judicial circuit, in the southern district of Alabama, the plaintiff read in evidence to the jury the two notes sued on, and the deposition of Hood taken under the provisions of the act of Congress, proving that Euclid Stevenson was a member of the firm of Strader, Perrine & Company; that the notes sued on were executed by the said Stevenson; that they bore date before any public notice was given of the dissolution of the said firm; Hood further proved that the firm of Stinson & Campbell was indebted to the plaintiff in the summer of 1831 to the amount of twenty thousand dollars and upwards; and that these notes were passed before maturity by the said Stinson and Campbell to the said plaintiff in part payment of such indebtedness, and were credited on their account. The plaintiff's counsel here rested their case.

The defendants then offered the deposition of D. P. Strader, one of the firm of Strader, Perrine & Co., on whom process had not been served. This was objected to by the plaintiff's counsel on the ground of Strader's incompetency as one of the makers of the note; this objection was overruled by the court; to which decision the plaintiff, by his counsel, excepted, which exception is allowed.

The counsel for the plaintiff then objected to the evidence of Strader on the further ground that, although tending to shew the execution of the said notes by Stevenson to have been in fraud of his partners, and the knowledge of that fact by Stinson & Campbell, it was in no way connected with the plaintiff, nor did it shew any notice of such fraud to have been given to the plaintiff, or any circumstance equivalent to such notice. This objection was also overruled by the court, to which decision the plaintiff, by his counsel *objected* and which exception is allowed.

The defendant's counsel then offered the deposition of one Charles, showing that in 1836, the firm of S. Thompson & Co., of New Orleans, of which witness was a partner, received from S. Conely for collection three drafts drawn by the plaintiff in this case on Stinson & Campbell, amounting in the aggregate to $16,-437. That on these drafts the said Stinson & Campbell paid the sum of fourteen hundred and forty-two dollars, and the balance they settled by drawing certain other drafts on Smyth, the plain-

tiff, in favor of the said S. Thompson and Company. To this testimony the plaintiff, by his counsel, objected, because there was no proof that these drafts were in any way connected with the notes here sued on, which objection was overruled by the court; to which decision, the plaintiff, by his counsel, excepted, which exception is allowed.

The defendants' counsel then introduced one Gould, by whom they proved that Perrine withdrew from the firm of Strader, Perrine and Company on the 6th of December, 1835, but that there was no public advertisement of the dissolution of the firm until the 23d of April, 1836; although the fact was known to Stinson and Campbell at the time of Perrine's withdrawal. To which testimony the plaintiff, by his counsel, objected, because there was no proof offered of a public notice of the dissolution of the firm prior to the date of the notes sued on, nor any proof of notice of the dissolution of the firm having been given to the plaintiff, which objection was overruled by the court; to which decision, the plaintiff, by counsel, excepts, which exception is allowed.

The defendants then introduced John Test, who swore, that [he] had some time in August, 1836, seen in the hands of an agent of the plaintiff, a paper purporting to be an account current between the plaintiff and Stinson and Campbell; that the witness had made a copy thereof, which he produced, and from which it appeared that on the 20th August, 1836, there was due from Stinson and Campbell to plaintiff, the sum of $29,205 58, exclusive of the drafts or acceptances, mentioned by Charles in his testimony, which were only noticed on the said account by a memorandum at the foot of the paper, stating that they would probably be settled in some other way. There was no credit given on the said account to Stinson and Campbell, by the plaintiff, for the amount of the notes sued upon. The defendants introduced this witness and the account in order that the jury might infer from the evidence, if it were proper for the purpose, that the notes had not been "bona fide" transferred to the plaintiff, but were taken by him as collaterals.

The plaintiff's counsel then moved the court to exclude from the jury all testimony as to the transactions between Stevenson and Stinson and Campbell, or between Stevenson and the other members of the firm of Strader, Perrine and Company, or between Strader, Perrine and Company and Stinson and Campbell; there being no proof of any notice to the plaintiff of any of the matters insisted upon by the defendants as a defence to the said action; which motion the court refused to grant, to which refusal the plaintiff by counsel excepts; which exception is allowed.

And thereupon, the court instructed the jury, that if they believe the said notes were made by the said Stevenson without the knowledge and consent of his partners, and that he passed them off to the said Stinson and Campbell without the knowledge or consent of his partners, and that if the said Stinson and Campbell at

the time of their receiving the said notes knew that, prior to that time, to wit, on 6th December, 1835, the said Perrine had withdrawn, from the said firm, and was not then a partner, and that if it was also proved to them, that the said notes were passed to the said Stinson and Campbell, by the said Stevenson, for his individual benefit, and not for the interest and benefit of the said firm, and that this was known to the said Stinson and Campbell, when they received the said notes, that then the jury must find for the defendant Perrine.

To which said charge the plaintiff by his counsel excepts, which exception is allowed.

(Signed) WM. CRAWFORD, [SEAL.]

(*Copies of notes sued on.*)

"MOBILE, *March* 10*th*, 1836.

"$4,725 $\frac{32}{100}$.

Four months after date, we promise to pay E. Stevenson, or order, forty-seven hundred and twenty-five $\frac{32}{100}$ dollars, value rec'd, negotiable and payable at Bank of Mobile.

(Signed) "STRADER, PERRINE, & Co."

(Endorsed.)—"Pay to the order of Stinson & Campbell.
E. STEVENSON."

"Pay to the order of Mr. Sam'l Smyth.
STINSON & CAMPBELL."

"Pay to the order of Mr. Sam'l Hood.
SAM'L SMYTH."

"MOBILE, *March* 28*th*, 1836.

"$6,126 $\frac{54}{100}$.

"Six months after date, we promise to [pay to] E. Stevenson, or order, sixty-one hundred and twenty-six $\frac{64}{100}$ dollars, value received, negotiable and payable at the bank of Mobile.

(Signed) "STRADER, PERRINE & Co."

(Endorsed.)—"Pay to the order of Stinson & Campbell.
"E. STEVENSON."

"Pay to the order of Mr. Sam'l Smyth.
"STINSON & CAMPBELL."

"Pay to the order of Mr. Samuel Hood.
"SAM'L SMYTH."
"SAM. HOOD."

I, David Files, clerk of the circuit court of the United States, for the fifth (late the ninth) judicial circuit and southern district of Alabama, do hereby certify, that the foregoing twelve pages contain a true, full, and perfect exemplification of the record and proceedings in a certain suit lately pending and determined before said

court, wherein Samuel Smyth was plaintiff, and Strader, Perrine and Company were defendants.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of said circuit [SEAL.] court, this fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-three.

DAVID FILES,
Clerk C. C. So. D. Ala.

UNITED STATES OF AMERICA,
Eastern district of Louisiana, city of New Orleans, ss:

Be it remembered, that on this eleventh day of March, in the year of our Lord one thousand eight hundred and forty-two, before me, Duncan N. Hennan, a commissioner duly appointed on the 29 February, 1836, by the district court of the United States, in and for the eastern district of Louisiana, under and by virtue of the acts of Congress, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20th, 1812; and the act of Congress, entitled an act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed March 1st, 1817; and the act passed Sep. 24, 1789, entitled an act to establish the judicial courts of the United States," personally appeared John W. Lane, residing in this city, a witness of lawful age, for the defendants, in a civil suit now depending in the circuit court of the United States, in and for the southern district of Alabama, wherein Samuel Smyth is plaintiff, and Strader, Perrine & Co. are defendants; and the said John W. Lane being by me first carefully examined, and cautioned, and sworn on the holy evangelists of Almighty God, to testify the whole truth, and nothing but the truth, did depose and say, that he resides in New Orleans, Louisiana, more *the* one hundred miles from Mobile, Alabama.

Deponent further saith, that he has no acquaintance with the plaintiff, but is well acquainted with Dr. Perrine, one of the defendants, but does not know personally the other defendants. Campbell, one of the firm of Stinson & Campbell, (said Stinson & Campbell were engaged in the western trade in New Orleans, and failed in 1836,) told defendant that Euclid Stevenson, one of the house of Strader, Perrine & Co., had transferred to Stinson & Campbell, in the month of June, 1836, a number of notes made by Strader, Perrine & Co., for a debt due them by said Stevenson on his own account; that a large balance was still due said Stinson & Campbell by said Stevenson. Among the notes so transferred in June, 1836, by said Stevenson to said Stinson & Campbell, said Campbell told defendant were two, amounts to about eleven thousand dollars, which said Stinson & Campbell had transferred to one Samuel Smyth of Philadelphia; and one other, amount not remembered,

which said Stinson & Campbell had transferred to one Mullen of Philadelphia. Deponent's knowledge is entirely derived from his conversations with Campbell, of the firm of Stinson & Campbell; and every thing stated in this deposition, except of course his acquaintance with the parties, is the result of his said conversation with said Campbell.

(Signed) "JNO. W. LANE."

UNITED STATES OF AMERICA,

Eastern district of Louisiana, city of New Orleans, ss:

I, Duncan N. Hennen, a commissioner duly appointed on the 29 February, 1836, by the district court of the United States for the eastern district of Louisiana, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20th, 1812; [and the act of] of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed March 1st, 1817; and the act passed Sept. 24, 1789, entitled an act to establish the judicial courts of the United States," do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness, John W. Lane, resides in New Orleans, Louisiana, more than one hundred miles from Mobile, Alabama.

I further certify, that no notification was made out and served on plaintiff, his agent or attorney, to be present at the taking of the deposition, and to put interrogatories if he or they may think [fit], and that no notification of the time and place of taking the said deposition was made out and served on plaintiff, because neither the plaintiff, nor any attorney nor agent of plaintiff, was at the time of taking said deposition within (100) one hundred miles of the said city of New Orleans, the place of taking the said deposition.

I further certify, that on the eleventh day of March, A. D. 1842, I was attended by John W. Lane, the witness, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of closing, sealing, and forwarding it to the court for which it was taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition mentioned, or in any way interested in the event of the said civil cause depending between Samuel Smyth and Strader, Perrine & Co.

In testimony whereof, I have hereunto set my hand and seal, this eleventh day of March, in the year of our Lord one thousand eight hundred and forty-two.

(Signed) DUNCAN N. HENNEN, [SEAL.]

U. S. Com'r dist. court U. S. for the east'n dist. of Louisiana.

Published in open court 21st April, 1842.

DAVID FILES,
C. C. C. S. D. Ala.

I, David Files, clerk of the circuit court of the United States, for the fifth (late the ninth) judicial circuit and southern district of Alabama, do hereby certify, that the above and beforegoing last two pages contain a full, true, and perfect copy of the deposition of John W. Lane, used and read as evidence in a certain suit lately pending and determined before said court, wherein Samuel Smyth was plaintiff, and Strader, Perrine & Co. were defendants.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of said circuit [SEAL.] court, this fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-three.

DAVID FILES,
Clerk C. C. So. Dist. Ala.

UNITED STATES OF AMERICA,
Eastern district of Louisiana, city of New Orleans, ss:

Be it remembered, that on this eleventh day of March, in the year of our Lord one thousand eight hundred and forty-two, before me, Duncan N. Hennen, a commissioner duly appointed on the 29 February, 1836, by the district court of the United States, in and for the eastern district of Louisiana, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20th, 1812; and the act of Congress entitled 'An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed March 1st, 1817; and the act passed Sept. 24, 1789, entitled 'An act to establish the judicial courts of the United States," personally appeared Richard Charles, residing in this city, a witness of lawful age, for the defendants, in a civil suit now depending in the circuit court of the United States, in and for the southern district of Alabama, wherein Samuel Smyth is plaintiff, and Strader, Perrine & Co. are defendants; and the said Richard Charles being by me first carefully examined, and cautioned, and sworn on the holy evangelists of Almighty God, to testify the whole truth and nothing but the truth, did depose and say, that he resides in New Orleans, Louisiana, more than one hundred miles from Mobile, Alabama; he knows Samuel Smyth, the plaintiff, and has a slight acquaintance with Dr. Perrine, but does not know any of the other defendants. In 1836, Samuel Thompson & Co., of which firm deponent was a member, were acting as the agents of Samuel Conely; that Samuel Thompson & Co. received from Mr. Conly for collection, on account of said Conly, three drafts, copies of which are annexed to this deposition. These drafts were protested for non-payment. The draft

for five thousand dollars was settled for by a payment in cash of fourteen hundred and forty-two dollars, ($1,442,) and a bill for the balance drawn by Stinson & Campbell on Samuel Smyth, in favour of Saml. Thompson & Co. In satisfaction of the two other drafts, one for six thousand dollars, ($6,000,) and one for five thousand four hundred and thirty-seven $\frac{60}{100}$ dollars, ($5,437 $\frac{60}{100}$,) Stinson & Campbell drew upon Samuel Smyth, in favour of Samuel Thompson & Co., three drafts, one for three thousand eight hundred and twelve $\frac{53}{100}$ dollars, payable thirty days after sight; one for three thousand eight hundred and twelve $\frac{53}{100}$ dollars, payable sixty days after sight; and one for three thousand eight hundred and twelve $\frac{54}{100}$ dollars, payable ninety days after sight. Deponent's books do not show the dates of these drafts, but as they were remitted to Conely on the 5th August, 1836, deponent presumes they were dated on that day. The protested bills, copies of which are annexed, are in deponent's possession. Throughout this matter Samuel Thompson & Co. acted merely as the agents of Conely.

(Signed) RD. CHARLES.

UNITED STATES OF AMERICA,

Eastern district of Louisiana, city of New Orleans, ss:

I, Duncan N. Hennen, a commissioner duly appointed on the 29th February, 1836, by the district court of the United States, for the eastern district of Louisana, under and by virtue of the acts of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in courts of the United States," passed February 20th, 1812; and the act of Congress entitled "an act in addition to an act entitled 'an act for the more convenient taking of affidavits and bail in civil causes depending in courts of the United States,' passed March 1st, 1817; and the act passed Sept. 24, 1789, entitled 'an act to establish the judicial courts of the United States," do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness, Richard Charles, resides in New Orleans, more than one hundred miles from Mobile, Alabama.

I further certify, that no notification was made out and served on plaintiff, his agent, or attorney, to be present at the taking of the deposition, and to put interrogatories if he or they may think fit, and that no notification of the time and place of taking the said deposition was made out and served on plaintiff, because neither the said plaintiff, nor any agent, or attorney of plaintiff, was at the time of taking said deposition within (100) one hundred miles of the said city of New Orleans, the place of taking the said deposition.

I further certify, that on the eleventh day of March, A. D. 1842, I was attended by Richard Charles, the witness, and the witness was by me carefully examined, and cautioned and sworn to testify the whole truth, and the deposition was by me reduced to writing

in the presence of the witness, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of closing, sealing and forwarding it to the court for which it was taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition mentioned, or in any way interested in the event of the said civil cause depending between the parties named in the caption aforesaid.

In testimony whereof, I have hereunto set my hand and seal, this 11th day of March, in the year of our Lord one thousand eight hundred and forty-two.

DUNCAN N. HENNEN, [SEAL.]
U. S. Commissioner district court U. S.
for the eastern district of Louisiana.

Opened 21st March, 1842.

DAVID FILES, *C. C. C. S. D. Ala.*

Documents annexed.

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known, that on this twenty-fifth day of June, in the year one thousand eight hundred and thirty-six, at the request of Messrs. Sam'l Thompson & Co., holders of the original draft, whereof a true copy is on the reverse hereof written, I, William Christy, a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, presented the said draft to Mr. Stinson, one of the members of the firm of Stinson & Campbell, the acceptors, and demanded payment thereof, and was answered that they could not pay the same. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interests, suffered, or to be suffered, for want of payment of the said draft. Thus done and protested in the presence of W. G. Latham and Wm. C. Rynolds, witnesses.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) WM. CHRISTY, *Notary Public.*

Exch. for $5,000. PHILADELPHIA, 24*th March*, 1836.

Ninety days after date of this my only bill of this tenor and date, pay to the order of Mr. Sam'l Conely five thousand dollars for value received, and place to account of

Your ob't serv't, SAM'L SMYTH.

To Messrs. STINSON & CAMPBELL, *New Orleans.*

Endorsed—Pay to the order of Sam'l Thompson & Co.
SAMUEL CONELY,
SAMUEL THOMPSON & Co.

"Document A, annexed to deposition of Richard Charles.
D. N. HENNEN, *U. S. C.*"

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known that on this thirtieth day of July, in the year one thousand eight hundred and thirty-six, at the request of Robert G. Dixon, esq., cashier of, and holder for, the Atchafalaya Railroad and Banking Co. of this city, holder of the original draft, whereof a true copy is on the reverse hereof written.

I, Joseph Benzaken Marks, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to Mr. Eady Stinson, one of the members of the firm of Stinson and Campbell, the acceptors, at their counting room in this city, and demanded payment thereof. I was answered, that the same could not be paid. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interests, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested, in the presence of—
ISAAC D. MARKS, and
DANIEL J. RICARDO, witnesses.

In testimony whereof, I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) JOS. B. MARKS,
Notary Public.

PHILADELPHIA, *May* 29, 1836.

Dollars 6,000.

Sixty days after date, please pay to the order of Mr. Sam'l Conely, six thousand dollars, value received, which charge to account of
Yours, truly,
SAM'L SMYTH.

To Messrs. STINSON & CAMPBELL, *New Orleans.*
STINSON & CAMPBELL.

Endorsed.—Pay to the order of Sam'l Thompson & Co.
SAMUEL CONELY,
SAMUEL THOMPSON & Co.

Document B, annexed to deposition of Richard Charles.
D. N. HENNEN, *U. S. C.*

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known that on this fifth day of August, in the year one thousand eight hundred and thirty-six, at the request of Robert G. Dixon, esq., cashier of, and holder for, the Atchafalaya Railroad and Banking Company of this city, of the original draft whereof a true copy is on the reverse hereof written.

I, Joseph Bensaken Marks, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to Mr. James Campbell, one of the members of the firm of Stinson & Campbell, the acceptors, in this city, and demanded payment thereof; I was answered, that the same could not be paid. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all other[s] whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interest, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of—
ISAAC D. MARKS, and
DANIEL J. RICARDO, witnesses.

In testimony whereof, I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) JOS. B. MARKS,
Notary Public.

PHILADELPHIA, 3*d June*, 1836.

$5,437 $\frac{00}{100}$.

Sixty days after date, please pay to the order of Mr. Samuel Conely, five thousand four hundred and thirty-seven $\frac{60}{100}$ dollars, value received, and charge to account as advised of

Yours, truly,
SAM'L SMYTH.

Endorsed—Pay to the order of Sam'l Thompson & Co.
SAMUEL CONELY,
SAMUEL THOMPSON & Co.

Document C, annexed to deposition of R. Charles.
(Signed) D. N. HENNEN, *U. S. C.*

I, David Files, clerk of the circuit court of the United States, for the fifth (late the ninth) judicial circuit, southern district of Alabama, do hereby certify, that the beforegoing last six pages contain a true, full, and perfect copy of the depositions, (with the documents thereunto annexed) of Richard Charles, used and read in a certain cause, lately pending and determined before said court,

wherein Samuel Smyth was plaintiff, and Strader, Perrine & Co. were defendants.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand, and affixed the seal of said circuit [L. S.] court, this fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-three.

DAVID FILES,
Cl'k C. C. So. D. Ala.

In a certain cause pending in the circuit court of the United States of America, for the ninth circuit, in the southern district of Alabama, at Mobile, wherein Saml. Smith is plaintiff, and Strader, Perrine & Co. are defendants, I, Samuel W. Davies, mayor of the city of Cincinnati, county of Hamilton, and State of Ohio, at the instance of the defendants in the said suit above entitled, have caused D. P. Strader, who resides in said city of Cincinnati, more than one hundred miles from the city of Mobile, to come before me at my office in said city, and the said D. P. Strader having been by me examined, cautioned and sworn to testify the whole truth, did depose and say, and doth depose and say, that he resideth in said city of Cincinnati, and State of Ohio, and more than one hundred miles from Mobile aforesaid, the place of trial of this cause. Furthermore, he saith, that about the 7th November, 1835, deponent left Mobile for New York to purchase goods for Strader, Perrine & Co., the firm was composed of D. P. Strader, James Perrine, Jno. H. Woodcock and Euclid Stevenson in January, 1836. While deponent was in New York, he received a letter from E. Stevenson announcing to him the dissolution of the firm by the withdrawal of James Perrine, he, Stevenson, having purchased out his (Perrine's) interest. On deponent's return to Mobile, about the 14th March, 1836, he found out such was the fact. Of this deponent was also informed by Stinson, of the firm of Stinson & Campbell. He, Stinson, complaining of Stevenson's drawing a draft on Stinson & Campbell for the purpose of purchasing out Perrine's interest; he, Stinson, at the same time expressing much astonishment that Stevenson should engage in any other business. Deponent informed Stinson that Stevenson had nothing to do with the management of the affairs of Strader, Perrine & Co., he, Stevenson would only receive his portion of the profits if any, or pay his part of the losses if any. Stinson remarked to deponent at same time, that Stevenson had no spare funds, and that Perrine was, as he was informed, the capitalist, and had withdrawn. About the 20th April, 1836, deponent was in New Orleans in company with Stevenson, while there one of the firm of Stinson & Campbell handed deponent a letter from the house in Mobile to Stinson & Campbell, announcing the dissolution of the partnership of Strader, Perrine & Co., which was published in the papers of Mobile. At this time Stevenson was in embarrassed circum

stances, and told Stinson, in deponent's hearing, that Strader, Perrine & Co. owed him, Stevenson, $3,000, and Stinson wanted deponent to give them, Stinson & Campbell, a draft upon Mobile for that amount. Deponent denied the claim, and refused to give the draft. At the same time deponent expressly asked Stinson if they, Stinson & Campbell, pretended to have any other claim against Strader, Perrine & Co., and he, Stinson, distinctly stated none whatever. In a conversation with Stinson, who was in Mobile about the 7th May, 1836, deponent, in company with Conn, who kept a jewelry establishment, called upon Stinson at E. Stevenson's store, and in a course of conversation directly interrogated Stinson if Stinson & Campbell ever had *had*, or pretended to have, any other claim upon Strader, Perrine & Co., save the $3,000 which Stevenson claimed on account of stock in the firm of Strader, Perrine & Co., and he, Stinson, answered expressly and distinctly—no, none whatever.

Deponent further states that E. Stevenson was apparently doing business in his own name, had a store, was constantly drawing bills of exchange on Stinson & Campbell, and accepting those drawn on him by Stinson & Campbell; he, Stevenson, had nothing to do with the management of the affairs of Strader, Perrine & Co., was seldom there. Strader, Perrine & Co. had nothing to do with Stinson & Campbell. E. Stevenson had repeatedly told deponent that Stinson & Campbell were his partners; that he had been sent to Mobile to facilitate them in their business. Deponent also states, sometime after the foregoing occurrences, one Hood, who represented himself as agent for Samuel Smyth, of Philadelphia, called on deponent in Mobile, and exhibited to him the notes in controversy, stating, at the same time, that Stinson & Campbell were indebted to said Smith about $20,000; and also exhibited, deponent believes, an account current, and told deponent that the above said notes, with some others, were receivable in payment, if collected. Deponent at that time pronounced them fraudulent; stated that Stinson & Campbell knew them to be such; that they were made after the dissolution of the partnership, and must have been made some time after the 7th May, and anti-dated, as Stinson had at that time expressly, and in Conn's hearing, told deponent that they, Stinson & Campbell, had no claim upon Strader, Perrine & Co., save the $3,000 above alluded to. Hood then wanted deponent to promise to pay one of the notes; said he would return the other to Stinson & Campbell. This deponent refused to do. Stevenson since then has repeatedly acknowledged that such was the fact, the anti-dating the notes, and that it was done at the instigation of Stinson. Deponent further states that he has seen said two notes, with two others for a similar amount, appeared all to have been made at the same time on the same sheet of paper, written by the same hand, with the same ink, bearing different dates, beginning with the 5th March, 1836, first; 10th March, 1836, second; 20th March, 1836,

third; 18th April, 1836, fourth; they were cut apart, and, when put together, exactly fitted.

The following is the form and substance of the two notes which were *which were* exhibited to deponent by Mr. Hood, on which suit has been commenced, so far as his memory now serves, and the documents in his possession at present exhibit; they were also endorsed on the back, as deponent has endorsed them on the face, so far as he can now remember. Deponent thinks Sam. Smith's name was endorsed on them, but of this he will not be positive.

"MARCH 10*th*, 1836.

"$4,725 32. Four months after date, we promise to pay E. Stevenson, or order, four thousand seven hundred and twenty-five $\frac{32}{100}$ dollars, value received, negotiable and payable at the Bank of Mobile.

STRADER, PERRINE & Co."

MARCH 28, 1836.

$6,126 54. Six months after date we promise to pay to E. Stevenson, or order, six thousand one hundred and twenty-six $\frac{54}{100}$ dollars, value received, negotiable and payable at the Bank of Mobile.

STRADER, PERRINE & Co.

(Signed) "D. P. STRADER."

"E. Stevenson, Stinson & Campbell," on each note.

And I, the said Samuel W. Davies, mayor of the said city, do hereby certify, that I am not of counsel or attorney to either of the said parties, or interested in the event of said cause.

I further certify, that the said plaintiffs have no agent or attorney known to me within one hundred miles of said city of Cincinnati, the place of taking the said deposition, nor is the said plaintiff within one hundred miles *to* the same place; and no notice of the taking of this testimony has, for that reason, been served on said plaintiff, and that the said testimony was reduced to writing by me, and by the said witness subscribed in my presence.

Given under my hand, and the seal of said city, this 24th day of
[L. S.] November, 1841.

"SAM'L W. DAVIES, *Mayor*."

I, David Files, clerk of the circuit court of the United States for the fifth (late the ninth) judicial circuit and southern district of Alabama, do hereby certify, that the above and beforegoing last three pages contain a true, full, and perfect copy of the deposition of D. P. Strader, used and read as evidence in a certain suit lately pending and determined before said court, wherein Samuel Smyth was plaintiff, and Strader, Perrine & Co. were defendants.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand, and affixed the seal of said circuit
[SEAL.] court, this fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-three.

DAVID FILES, *Clerk C. C. so. dist. Alabama.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, greeting:

Because, in the record and proceedings, as also in the rendition of judgment in a plea in the said circuit court, before you, wherein Samuel Smyth is plaintiff, and (D. P. Strader, J. Perrine, and J. H. Woodcock) Strader, Perrine & Co. are defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and it being fit, if error there be, the same should be corrected, and full and speedy justice be done the parties aforesaid, do command you, if judgment be rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same at Washington, on the second Monday of January next, in the Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further proceedings therein to correct the error, what of right, according to law, and the custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit [SEAL.] court, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-three.

Issued the tenth day of July, in the year of our Lord one thousand eight hundred and forty-three.

Attest:

DAVID FILES,
Clerk C. C. so. dist. Alabama.

UNITED STATES OF AMERICA:

The President of the United States to the marshal of the southern district of Alabama, greeting:

You are hereby commanded to cite and admonish Daniel P. Strader, James Perrine, and John H. Woodcock, late partners under the firm of Strader, Perrine & Co., to be and appear before the Supreme Court of the United States to be holden at the city of Washington on the second Monday of January next, then and there to hear errors assigned on a certain writ of error, directed to the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, in which Samuel Smyth is plaintiff, and Strader, Perrine & Co. are defendants. Herein fail not, and have you before the said Supreme Court this writ, with your endorsement.

Witness the Hon. William Crawford, associate judge of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, this 15th day of July, A. D. 1843.

WM. CRAWFORD, *Judge.*